

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

**ZACHARY SWAIN,**

Plaintiff,

**V.**

**1:22-cv-00408-JDL**

**MAINE DEPARTMENT OF  
CORRECTIONS et al.,**

## Defendants.

## ORDER ACCEPTING THE RECOMMENDED DECISION OF THE MAGISTRATE JUDGE

Plaintiff Zachary Swain initiated this action against the Maine Department of Corrections (“the Department”), five Department employees, Wellpath LLC (“Wellpath”), and four Wellpath employees on December 22, 2022 (ECF No. 1). On April 7, 2023, Swain filed an Amended Complaint (ECF No. 18). On April 21, 2023, the Department and its employees (the “Department Defendants”) filed a Partial Motion to Dismiss for Failure to State a Claim, requesting the dismissal of Counts Three and Four (ECF No. 20). Count Three alleges that Swain experienced discrimination because of his mental illness while incarcerated at the Maine State Prison, which the Department operates, in violation of the Americans with Disabilities Act (“ADA”). Count Four alleges that Swain was subjected to an unreasonable search in violation of the Fourth Amendment while incarcerated at the Maine State Prison. The Department Defendants present an affirmative defense to Count Four on the basis of qualified immunity.

United States Magistrate Judge John C. Nivison filed his Recommended Decision on Defendants' Motion to Dismiss with the Court on July 31, 2023 (ECF No. 29), pursuant to 28 U.S.C.A. § 636(b)(1)(B) (West 2023) and Fed. R. Civ. P. 72(b). The Magistrate Judge recommends denying the Department Defendants' Motion to Dismiss Counts Three and Four. The time within which to file objections has expired, and no objections have been filed. The Magistrate Judge provided notice that a party's failure to object would waive the right to *de novo* review and appeal.

Notwithstanding this waiver of *de novo* review, I have reviewed and considered the Recommended Decision, together with the entire record, and have made a *de novo* determination of all matters adjudicated by the Magistrate Judge. I concur with the recommendations of the Magistrate Judge for the reasons set forth in his Recommended Decision and determine that no further proceeding is necessary.

It is therefore **ORDERED** that the Recommended Decision (ECF No. 29) of the Magistrate Judge is hereby **ACCEPTED** and the Defendants' Motion to Dismiss (ECF No. 20) is **DENIED**.

**SO ORDERED.**

**Dated this 27th day of September, 2023.**

/s/ Jon D. Levy  
**CHIEF U.S. DISTRICT JUDGE**